

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>ANTHONY DeFRANCO,</b>	)	
<b>Plaintiff</b>	)	
	v.	)
	)	C.A. No. 04-230 Erie
<b>WILLIAM WOLFE, et. al.,</b>	)	District Judge Cohill
<b>Defendants.</b>	)	Magistrate Judge Baxter

**ORDER**

Plaintiff has filed a motion for subpoena [Document # 118] requesting that this Court issue a subpoena requiring Defendants to produce copies of vote sheets on his “z-code” status, which he deems “vital for this Court’s consideration on the Defendants’ [pending] motion to dismiss.” Plaintiff also seeks production of paperwork regarding the issuance of his z-code status at SCI-Smithfield, which he claims “bear directly on the motion to dismiss.”

AND NOW, this 22<sup>nd</sup> day of September, 2005;

IT IS HEREBY ORDERED that Plaintiff’s motion for subpoena [Document # 118] is DENIED. The documents Plaintiff seeks are not relevant to the determination of Defendants’ motion to dismiss, as a motion to dismiss merely challenges the sufficiency of Plaintiff’s pleadings and does not involve evidentiary findings. Moreover, Plaintiff has not alleged that he sought the requested documents in discovery and was refused production of such documents.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

S/Susan Paradise Baxter  
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SUSAN PARADISE BAXTER  
CHIEF U.S. MAGISTRATE JUDGE